KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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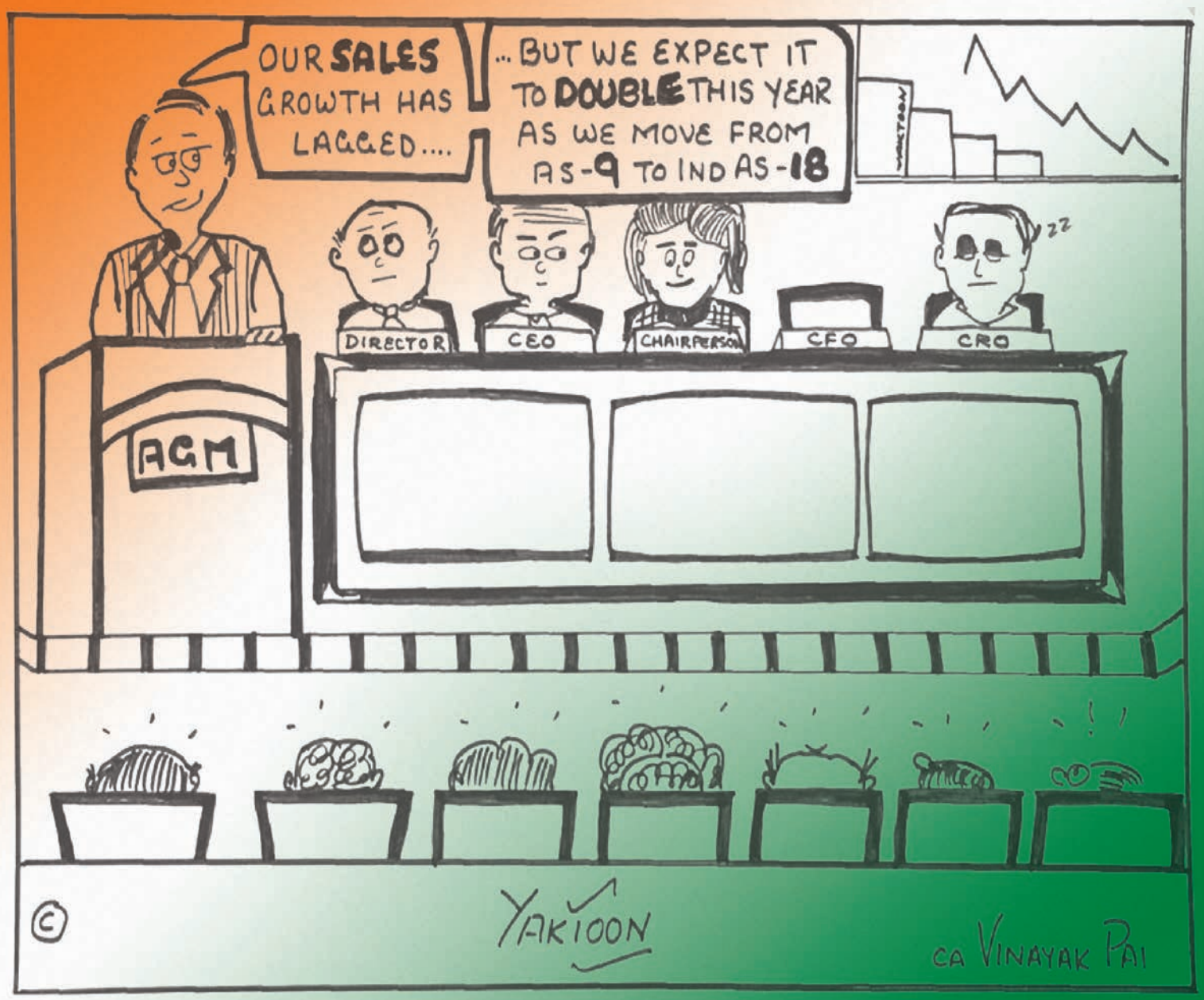
Ind AS 10 | Getting Ready for GST | Karnataka Entertainment Tax | Financial Reporting

A much awaited relief to Non-furnishing of PAN | Indirect Taxes Update | IGST



From the President

Dear Members,

'Independence', a phrase that many other citizens around the world cannot proclaim, since independence is out of reach of their corresponding territories which form part of bigger sovereign and internationally recognized states. There are many well-known and famous examples of territories around the world that aspire for a full sovereignty, some of them have even come together to form the Unrecognized Nations and Peoples Organization. Achieving independence is therefore not an easy task and many different factors need to coincide in order for a country to become independent. Sincere thanks to our predecessors who fought all odds to achieve independence and brought India in to diverse trajectory. This 70th Independence Day provides an opportunity to all of us to remember the sacrifices and pay tribute to national heroes. Consequently, Independence shall not become a just appearance, true independence and freedom can only exist in doing what's right. Let's pledge ourselves on this Independence Day for nation building by doing right things. Being a proud Indian, wish all my professional colleagues a very happy Independence Day.

Further this Independence Day has brought lot of opportunities to professionals by Introduction of Goods and Services Tax (GST). The crucial GST Bill was passed unanimously with amendments proposed by the Rajya Sabha with all 443 members present in Lok Sabha voted in favour of the historic bill. Expressing gratitude to all parties for support, Prime Minister described GST as a "crucial step" towards ending tax terrorism besides reducing corruption and black money and said the new regime of indirect taxation will make consumer the "king".

The introduction of GST will have huge impact as each and every business will be affected. The entire framework of indirect taxation will change including nature of levy, rate of taxes and administration of the taxes. Introduction of GST should rationalize the tax content in product price, enhance the ability of business entities to compete globally, and possibly dribble down to benefit the ultimate consumer. GST will have a crippling effect on the prices of all the goods and services in India. Amid this huge impact, lies an enormous opportunity for the tax professionals. KSCAA is working on a framework to provide workshop model to educate our fellow members and benefit the opportunities.

The Income Declaration Scheme (IDS), 2016 introduced by the Central Government gives an opportunity to tax evaders to disclose their unaccounted income or assets, and come out clean by paying the applicable tax, cess and penalty on the undisclosed income. This will help them regularise their wealth. But IDS is also for those who may have unknowingly not paid tax on certain income or assets bought from the income. The Centre has declared 30th September 2016 as the last date for making a declaration and 30 November 2016 as the date by which the tax, surcharge and penalty may be paid. Request members to educate their clients and make use of the opportunity provided by the Government.

Programs for the month

KSCAA is organising Seminar on 'Assessment of Charitable Trusts' at Davangere on 3rd September, 2016 in association with Davangere Chartered Accountants Association. Senior Fellow Member CA. Dr. N Suresh addressing the members on the topic.

Shimoga District CPE Chapter is organising a seminar on Direct Taxes in Shimoga on 20 August, 2016. This programme covers 'Tax Audit - Issues & Reporting Changes' and 'Taxation of Joint Development Agreements'. This seminar is jointly sponsored by Shimoga District Chartered Accountants Association and KSCAA. Eminent speakers, CA. Naveen Khariwal and CA. Prashanth G. S. are addressing members in this seminar.

Basavanagudi CPE Study Circle is arranging a Lecture meeting on 'Tax Audit Issues & Reporting Changes' by CA. P R Suresh on 26th August, 2016 and Lecture Meeting on 'How well you are prepared to deal with IFC?' by CA. Amit Agrawal and CA. Madhavi D K on 9th September, 2016 at Vasavi Vidyaniketan Trust, Bengaluru.

Program details are published elsewhere in the news bulletin. Members are requested to make use of these programs.

This month's "You Know" Series introduces "**yakTOON".** yakTOON is a cartoon/comic strip by cartoonist CA. Vinayak Pai V., who is a Fellow Member of ICAI and member of Indian Institute of Cartoonists (IIC). His cartoons are well derived pictorial of professional issues giving a humorous touch.

I wish to end my message with a brilliant quote which I believe:

"You only live once,
but if you do it right,
once is enough."

Always at your service

Raghavendra Puranik
President

Jnanam Sa-Vijnanam
Creating Knowledge Consciousness

KSCAA welcomes
our newly Co-opted
Executive Committee Member
for the term 2016-17
CA Anant Nyamannavar

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KSCAA welcomes articles & views from members for publication in the news bulletin / website.

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You know series YakTOON

YakTOON is a cartoon/comic strip by cartoonist CA Vinayak Pai V. His first cartoon was published in Indian Express during his college days.

YakTOON attempts to bring out the humorous aspect in various topics of daily interest. The primary focus of YakToon is cartoons on the subject of "Financial Reporting" covering IND-AS/IFRS/USGAAP. It is a pioneering work in the field of "financial reporting cartoons" in India.

Over 70 YakToons have been published in 2016 in various journals and magazines. Taxmann is regularly publishing close to 8 financial reporting YakTOONs each month in its online editions and print magazine.

KSCAA WELCOMES NEW MEMBERS - AUGUST 2016

Sl.No.	Name	Place
1	Yadhunandan H	Hassan
2	Priyanka Sri Prabhu Dayal Jain	Hassan
3	Shobha Rao B.S	Bangalore
4	Bhaskar M	Bangalore
5	Ananthalakshmi S	Bangalore
6	Thriven Kumar N	Bangalore
7	Saransh S	Bangalore
8	Vibhav Hegde	Bangalore
9	Venkatesh Patil	Mudhol
10	Shripad H.N.	Bangalore
11	Mohana Acharya M	Bangalore
12	Rudramuniswamy K.	Hubli
13	Darshan Kumar P.S.	Bangalore

INDIAN ACCOUNTING STANDARDS (Ind AS) 10 Events after the Reporting Period

CA S. Krishnaswamy

ICDS issued by CBDT does not cover all accounting situations that are covered by IND AS. One such area is events occurring after the reporting date. It may so happen that 1) an expenditure incurred during a particular year does not get crystallized as to warrant its write off. Such an expenditure may crystallize in a later year when the exemption is claimed.2) Another instance is when a provision is made for a particular expenditure during the year the estimate may turn out to be lesser than actual expenditure as revealed in a later year.3) Another instance is an expenditure arising after the reporting date but that impacts the financials of an earlier year. The standard deals with all such situations.

The Standard also gives examples of conditions that existed at the end of the reporting period where decision by Board is taken but confirmed later.

In Appendix attached to the Standard, following situations are explained:

1. Distribution of Non-cash Assets to Owners

   Under companies act, 2013 dividends cannot be distributed in a form other than cash.

2. Accounting Principles—Recognition of Dividends.

Scope:

This Standard shall be applied in the accounting for, and disclosure of, events after the reporting period.

Definitions:

The following terms are used in this Standard with the meanings specified:

Events after the reporting period are those events, favourable and unfavourable, that occur between the end of the reporting period and the date when the financial statements are approved by the Board of Directors in case of a company, and, by the corresponding approving authority in case of any other entity for issue. Two types of events can be identified:

a) Those that provide evidence of conditions that existed at the end of the reporting period (adjusting events after the reporting period) ; and

b) Those that are indicative of conditions that arose after the reporting period (non-adjusting events after the reporting period).

Adjusting events after the reporting period:

An entity shall adjust the amounts recognised in its financial statements to reflect adjusting events after the reporting period.

Non-adjusting events after the reporting period:

An entity shall not adjust the amounts recognised in its financial statements to reflect non-adjusting events after the reporting period.

Dividends:

If an entity declares dividends to holders of equity instruments (as defined in the Ind AS 32 Financial Instruments: Presentation) after the reporting period, the entity shall not recognize those dividends as a liability at the end of the reporting period.

Going Concern:

An entity shall not prepare its financial statements on a going concern basis if management determines after the reporting period either that it intends to liquidate the entity or to cease trading, or that it has no realistic alternative but to do so.

Disclosure:-

Date of approval for issue:

An entity shall disclose the date when the financial statements were approved for issue and who gave that approval. If the entity's owners or others have the power to amend the financial statements after issue, the entity shall disclose that fact.

Updating disclosure about conditions at the end of the reporting period:

If an entity receives information after the reporting period about conditions that existed at the end of the reporting period, it shall update disclosures that relate to those conditions, in the light of the new information.

Non-adjusting events after the reporting period:

If non-adjusting events after the reporting period are material, non-disclosure could influence the economic decisions that users make on the basis of the financial statements. Accordingly, an entity shall disclose the following for each material category of non-adjusting event after the reporting period:

a) the nature of the event; and

b) an estimate of its financial effect, or a statement that such an estimate cannot be made.

APPENDIX—A:

When to recognise a dividend payable:

The liability to pay a dividend shall be recognised when the

dividend is appropriately authorized and is no longer at the discretion of the entity, which is the date:

a) When declaration of the dividend, eg by management or the board of directors, is approved by the relevant authority, eg the shareholders, if the jurisdiction requires such approval, or

b) When the dividend is declared, eg by management or the board of directors, if the jurisdiction does not require further approval.

Measurement of a dividend payable:

An entity shall measure a liability to distribute non-cash assets as a dividend to its owners at the fair value of the assets to be distributed.

If an entity gives its owners a choice of receiving either a non-cash asset or a cash alternative, the entity shall estimate the dividend payable by considering both the fair value of each alternative and the associated probability of owners selecting each alternative.

At the end of each reporting period and at the date of settlement, the entity shall review and adjust the carrying amount of the dividend payable, with any changes in the carrying amount of the dividend payable recognised in equity as adjustments to the amount of the distribution.

Accounting for any differences between the carrying amount of the assets distributed and the carrying amount of the dividend payable when an equity settles the dividend payable:

When an entity settles the dividend payable, it shall recognise the difference, if any, between the carrying amount of the assets distributed and the carrying amount of the dividend payable in profit or loss.

APPENDIX—A:

Presentation and disclosures:

An entity shall present the difference described in paragraph 14 as a separate line item in profit or loss.

An entity shall disclose the following information, if applicable:

a) the carrying amount of the dividend payable at the beginning and end of the period; and

b) the increase or decrease in the carrying amount recognised in the period in accordance with paragraph 13 as result of a change in the fair value of the assets to be distributed.

If, after the end of a reporting period but before the financial statements are approved for issue, an entity declares a dividend to distribute a non-cash asset, it shall disclose:

a) the nature of the asset to be distributed;

b) the carrying amount of the asset to be distributed as of the end of the reporting period; and

c) the estimated fair value of the asset to be distributed as of the end of the reporting period, if it is different from its carrying amount, and the information about the method used to determine that fair value required by Ind AS 107 paragraph 27 (a) and (b).

Case Law:

Commissioner of Income Tax vs. Herbalife International India Pvt. Ltd.

[2016] 384 ITR 276 (Delhi)

WHERE a payment could not be made on the relevant year but made in a later year securing RBI restriction, the payment in the later year was admissible.

"Question (c) concerns the prior period expenses for the period January 1, 2000 to March 31, 2000 which was allowed to the assessee as deduction by the Income-tax Appellate Tribunal."

Paragraph 64: "the case of the Revenue which was accepted by the Assessing Officer as well as by the Commissioner of Income-tax (Appeals) is that the expenses for the above period did not accrue in the previous year relevant to the assessment year 2001-02 and therefore, could not be allowed. The Income-tax Appellate Tribunal accepted the plea of the assessee that the remittance could not have been made to HIAI without prior approval of the Reserve Bank of India. The approval could be obtained only on June 30, 2000. It is not in dispute that HIAI first raised a debit note/invoice on June 30, 2000 on the assessee and there was no possibility of an estimation of the liability in the absence of any past precedent. There was no basis on which an estimate of the expenses could be ascertained."

Paragraph 65: "In Nonsuch Tea Estates Limited v. CIT (supra), the payments made by the assessee to its managing agent which required the permission of the Central Government under the Companies Act, 1956. Though the remuneration paid by the assessee to the managing agent related to the period prior to the assessment year 1959-60, it was claimed during the said assessment year on the ground that the Central Government's approval was obtained only in the previous year related to the assessment year 1959-60. The High Court did not agree with the plea of the assessee but the Supreme Court reversed the High Court and held that liability towards royalty accrued only when the approval was granted by the Central Government for the appointment of the managing agent."

Paragraph 66: "the court concurs with the view expressed by the Appellate Tribunal in the present case, that the expenses for the period January 1,2000 to March 31.2000 accrued as a liability to the assessee only during the previous year and that the said expenditure was rightly allowed as deduction during the assessment year in question. Question (c) is answered in the affirmative, i.e., in favour of the assessee and against the Revenue."

(Contd. in page 7)

Getting Ready for GST for Professionals

CA Madhukar N Hiregange and **CA Mahadev R**

GST may be a reality soon. The constitutional amendment bill has been approved in Rajya Sabha with clear majority on 03.08.2016. GST may get implemented (though there are practical difficulties) with effect from April 2017. For CAs, it is very important to get updated with the proposed GST law in order to enable proper advise to the clients or enable the entities they are working, for transition to GST. In this article, we have discussed opportunities and few important steps to be taken in this regard.

Opportunities for chartered accountants

Introduction of GST would create in short term a lot of opportunities. Full time CAs in sales tax and other indirect tax practitioners may find it easier to understand the proposed GST as most of the provisions of GST bill are influenced by service tax / VAT / central excise provisions. Following are few services which could be added to the service basket of practicing CAs in GST regime which could be of great value to business community:

a) Preliminary GST impact study

The introduction of GST would have huge impact (could be positive or negative) on manufacturing, trading and service industry. Manufacturing sector may find GST introduction to be positive as cascading taxes would get reduced and overall tax payment would be less compared present rate of taxes. For few services, it could be negative as rate of GST could be 18 % which is higher than present service tax rate of 15%. Therefore, it is essential for the business entities to get preliminary GST impact study done to ascertain the impact on the business. CAs would be apt for providing this service, provided they are well prepared in GST. Presently, model GST law along with few reports on refund, payment, registration and returns are available in public domain which could be relied on for impact study. The impact study report would require be relooked once other regulations and modified GST law is introduced.

b) Assistance in transition phase

After impact study analysis, CAs could assist the business entities in implementation of GST during transition phase. Transition phase could include identification of eligible credits, modification of contracts / agreements, suggestions for modification of ERPs considering GST requirements, training of vendors if necessary. ERP implementation could well be a separate service as GST would be administered through full automation and manual intervention would be very less.

c) Training for entities for compliance

Initially there would be lot of challenges for business entities in implementation of GST. All important divisions of a business such as marketing, stores, finance / accounts would be in need to understand the basics of GST as it is a new law. Entities could face lot of challenges in transition phase. CAs could help the industry during this phase for smooth transition by structuring appropriate training programs.

d) Business consultant

Post implementation of GST, the CAs can act as business consultant considering the GST law as a whole instead of merely acting as tax consultants. As most of the indirect taxes would be merged in GST, CAs can be well prepared to be overall business consultant. Knowledge of implication under direct tax / international taxation in addition to GST would be of a great use. This could include business structuring / tax advice / guiding on development of standard operating procedure etc.

e) Regular review / compliance assistance of GST compliance

CAs could take up regular review of compliance for business entities to ensure compliance with respect to tax payments, availment of credits etc. In GST, compliance would be a key for the assessee for availment of credits, payment of taxes, taking deduction etc. There is a proposal to introduce matching concept wherein the credit for the buyer would be allowed only if taxes are properly reflected by the seller and appropriately paid to department by such seller. For CAs, compliance assistance could be a great opportunity.

f) Mandatory audit by CAs or cost accountants

Section 42 (4) of model GST law provides for mandatory audit of books of account for all taxable persons on reaching specified turnover. Such audits can be undertaken only by CAs or cost accountants. This is in line with the audits under present VAT laws of most states. Post implementation, the mandatory audits could be taken up by CAs.

g) *Dispute avoidance and resolution*

Initially there could be lot of disputes in GST for which the proposed GST council has to establish a mechanism for resolution. This could create few opportunities to the professionals.

The above list is only illustrative and there could be many more services to offer. We need to wait and watch for what additional opportunities could get created once the final GST law is introduced along with various rules and regulations.

How to get ready for client's services

Before proceeding to provide GST related services, the professionals should be thorough with the GST law. As the present law is only in draft stage, lot of changes could be expected before law becomes final. Following could be few ways to update knowledge of GST:

a) Attend seminar – This would be critical to understand the broad concept of GST in the preliminary stage.

b) Attend workshop – In order to get detailed understanding of GST, attending workshops on GST would be essential.

c) Reading bare Act – To understand any law, it is important to ready the provisions as it is in the bare Act. The present model GST law may be understood which has many provisions similar to provisions in present indirect tax laws. One good example could be concept of credit on capital goods in GST is very similar to what is there in present Cenvat credit provisions. Knowledge of present indirect tax law could also be helpful to certain extent to understand proposed GST.

d) Forming study circles – There is nothing like meeting of professionals to discuss the law which could throw lot of questions as well as answers. Study circles would be helpful in understanding the law in better manner.

Conclusion

At the present moment it is not clear if GST could get implemented from April 2017 or not. Nevertheless it is time for the professionals to start preparing in the best way possible to cater the needs of the clients. We could only hope that a qualitative GST law is introduced considering the purpose of introduction of GST rather than being time bound and introduce GST in hurry.

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INDIAN ACCOUNTING STANDARDS (Ind AS)
10 Events after the Reporting Period

(Contd. from page 5)

In Binami Cement Ltd. Vs. Commssioner of Income Tax and Another. [2016] 380 ITR 116 (Cal).

"It was held that the expenditure of a failed project although incurred in an earlier year but not claimed in that year may be allowed in a later year, when the project was abandoned reversing the decision of the ITAT. The Court held:

"1. Following the judgement in the case of Gajapathi Naidu (supra) the question to be asked is when did the expenditure claimed by way of deduction arise? There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further. The decision to abandon the project was the cause for claiming the deduction. The decision was taken in the relevant year. It can, therefore, be safely concluded that the expenditure arose in the relevant year.

1. Reference in this regard may be made to the decision in the case of CIT Vs. Indian Mica Supply Co. P. Ltd. Reported in [1970] 77 ITR 20 (SC) wherein the Supreme Court in considering a claim for deduction on arrear lease rents, ascertained subsequently consequent to a compromise arrived in the suit and paid in the relevant assessment year held, inter alia, as under (page 23) :

"The Tribunal, in the present case, had clearly found that it was only as a result of the compromise that the respondent became entitled to remain in possession of the demised land. Its liability also became ascertained only at that point of time. It cannot be disputed that the respondent in incurring the expenditure had acted in the interest of and for the purpose of its business. The expenditure was not laid out for any purpose other than that of carrying on the business. The deduction was properly admissible under section 10(2)(xv) of the Act and the matter being self-evident the High Court was fully justified in declining to accede to the prayer made under section 66(2) of the Indian Income-tax Act, 1922".

"Section 10(2)(xv) of the old Act corresponds to section 37(1) of the present Act. Our above conclusion is fortified by the view expressed by the Supreme Court in the said decision. For the aforesaid reasons the question is answered in the affirmative in favour of the assessee."

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KARNATAKA ENTERTAINMENT TAX

CA B.G. Srikanth Acharya and **CA Annapurna Kabra**

As per section 2(e) of KET Act, "Entertainment" means a horse race or live telecast of a horse race to which persons are admitted on payment, Cinematograph show including video shows or exhibition of films or moving pictures which are viewed and heard on the television, Any amusement or recreation or any entertainment provided by a multi system operator or exhibition of performance or pageant or a game or sport whether held indoor or outdoor to which persons are admitted on payment. The game or sport shall mean Cricket, Hockey, Food Ball, Basket Ball, Tennis, Golf, Volley-Ball, Badminton, Kabbadi, Swimming, Athletics, Base-Ball, Weight Lifting, and any other sport or game the Government may notify.

The Rate of Entertainment Tax in case of Horse race is 70% of admission price. The Rate of Entertainment Tax in case of Non regional language films is 30% of admission price. The Additional Tax is Rs. 1 per admission for air conditioned and air cooled theater and Rs. 0.50 for other theaters.

No tax shall be levied under the said sections on cinematograph show of a Kannada, kodava, Konkani, Tulu or Banjara film which is not a dubbed version of a film of other language subject to production of a certificate by the proprietor.

In respect of Cinema theaters paying tax under the composition in the manner specified in section 4-A the show tax are. If tickets does not exceed Rs.8/- then Rs. 40/- per show and if the ticket cost does not exceed Rs.10- 15/- then Rs. 45/- per show and if the ticket price exceeds Rs.15/- then Rs.50/- per show.

Additional Tax on Cinematograph shows: In case of Non regional language films if the payment for admission excluding entertainment tax of a person to the highest class of seat or accommodation. If ticket does not exceed Rs.5/- then Rs. 43/- per show, if ticket cost does not exceed Rs. 15/- then Rs. 55/- per show and if between Rs.15-Rs. 20/- then Rs. 68/- per show and if the ticket price exceeds Rs. 20 then Rs. 118/-.

Collection of service charges: In case of Air conditioned and Air cooled theaters it will be maximum of three rupees on each payment for admission. In case of other theaters but excluding touring talkies it will be maximum of two rupees on each payment for admission.

Special provision in respect of video shows: In case of assesse within City Municipal Corporation it is Rs. 15000/- per month, and within limits of All Municipal councils it is Rs. 7500/- per month and other than above it is 5000/- per month.

The entertainment tax shall be levied in respect of each payment for admission or each admission on a complimentary ticket or pass or invitation and shall be calculated and paid on the number of admissions. If payment for admission excluding the amount of tax is less than fifty rupees then no entertainment tax is payable. Even if complimentary tickets are issued for nil payment, the holder of such a ticket will be deemed to have been admitted on full payment.

If the seat or accommodation which the holder of such complimentary ticked is entitled is different from the classes or seat inside the auditorium or place of entertainment then the holder of such ticket shall be deemed to be entitled to occupy or use the highest class or seat or accommodation as if he has made full payment.

Special provision in respect of certain Entertainment: If the Cable TV operators are providing entertainment through antennae and Cable Television or antennae twenty rupees per month per connection will be charged and if operators provide entertainment through Cable Television exclusively Fifteen Rupees per month per connection. Payment of any contribution or subscription or installation and connection charges or any other charges collected. No tax will be collected if connection is provided less than 15 days and also no tax shall be payable if the proprietor is providing television signals under the Direct to Home Scheme and also no tax shall be payable under this section of the proprietor is receiving television signals from a Multi system operator paying tax under Section 4-G

Composition amount in respect of cable TV operator: Within Bangalore City Municipal Corporation area. Rs.6500 per month, City Municipal Corporations: Rs. 3000 per month and other than above Rs. 1500 per month/600 per month (population size 25000/-).

Tax on amusement: Tax shall be levied and collected at the rate of 5% on each payment for admission to or participation in an amusement. Provided that no tax shall be levied where the payment for admission excluding tax is less than Rs. 50

Tax on recreation Parlors: Tax shall be levied and collected at the rate of 5% on each payment for admission to or participation

in an amusement, provided that no tax shall be levied where the payment for admission excluding tax is less than Rs. 50.

Tax on Multi System Operator and Direct to Home service provider: Tax shall be levied and collected at the rate of 10% on the amounts received or receivable by a multi system operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a direct to home service provider towards providing television signals under the Direct to Home scheme.

Entertainment Tax is payable at the rate of 10% of each payment for admission excluding the amount of tax. If payment for admission to an entertainment is made wholly or partly by means of a lumpsum paid as subscription or contribution or sponsorship fee or advertisement charges or by whatever name called to any institution or any other person, for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, the entertainments tax shall be paid on the lumpsum.

In case of Dish TV India Limited (Formerly Known as M/s ASC Enterprises Limited) Bangalore Vs. Karnataka Appellate Tribunal) 2016 (85) Kar. L.J. 96 (Tri.) (DR)

The State legislature is empowered to levy entertainment tax under section 4-G of Karnataka Entertainment Tax Act on Multi system operator (MSO) and DTH service provider by virtue of Entry 62 of State List. The Appellant is also the DTH service provider and there is levy of tax liability on service tax component which is included in total amount received by DTH provider towards providing television signals under the DTH Scheme. The issue was whether there should be levy of Entertainment Tax on the gross amount which includes the service tax component. It was analyzed that when the gross amount charged by the service provider who has collected the gross amount inclusive of service tax payable, the gross amount is liable for Entertainment tax and not the net amount as Sec 4-G of KET Act uses the expression "on the amounts received or receivable" is liable for entertainment tax at 6%.

The Appellant contends that Sec 3(1) and Sec 4-G contradict each other. It is stated that the enactment has been done by separating MSOs and DTH service providers by two separate charging sections envisaging two different tax rates. Sec 3 levies tax as per payments for admission to entertainments whereas Sec 4-G is upon transmission of signals to customers directly. Therefore rejects the contention of the appellant that section 3(1) and section 4-G contradict each other.

The Authority has charged entertainment tax on gross amount which includes service tax component. The appellant has not complied with mandatory condition of indicating amounts charged exclusive of taxes under The Telecommunication (Broadcasting & Cable) Services Tariff Order and hence, deduction of entertainment tax from gross amount charged not permissible under KET Act & Rules.

The above litigation between central levy and State levy may be condensed as the Entertainment and amusement Tax except when levied by the local bodies will be subsuming into GST as per Draft GST Model law and accordingly Entertainment tax Act will be repealed.

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KSCAA Legal Fund - Contributor

(August-2016)

Name	Place	Amount (Rs.)
Ghali Shivalingayya Siddayya	Vijayapur	10,000/-

KSCAA requests the members to generously contribute towards the legal fund and support in its constant endeavour to protect the interests of our profession.

Those who are willing to contribute can pay by way of cheque or online transfer to following:

Beneficiary Name – Karnataka State Chartered Accountants Association

Savings Bank A/c No. – 039210011006886

Bank Name – Andhra Bank, N R Road

IFSC / RTGS – ANDB0000392

A Much Awaited Relief to Non-residents on Non-furnishing of PAN

CA Prakash Hegde and **CA Raghavendra N**

The provisions of Section 206AA of the Income Tax Act ('Act') require that when a person (recipient/deductee) is entitled to receive any amount from another person (payer/ deductor) and if that amount is subject to Tax Deduction at Source ('TDS'), the recipient has to furnish his Permanent Account Number ('PAN') to the payer. If the PAN is not furnished by the recipient, the payer is required to deduct taxes at the highest of the following rates:

a) Rate specified in the relevant provisions of the Act;

b) Rates in force;

c) 20%.

The above provisions were introduced by the Finance Act 2009 with effect from 01 April 2010 to track the taxability of payments in the hands of recipients and also to compel the recipients to obtain PAN in India. These provisions do not distinguish between resident assessees and non-resident assessees and therefore, are applicable to all recipients if the amount they are entitled to receive is subject to TDS.

India has Double Taxation Avoidance Agreements ('DTAA') with many countries providing beneficial provisions for taxation of income from royalties, interest, fees for technical services etc. received by non-residents. Further, the provisions of section 90(2) of the Act give an option to an assessee to be governed either by the provisions of the Act or the applicable Double Taxation Avoidance Agreement ('DTAA'), whichever are more beneficial. In contrast to this, section 206AA starts with the non-obstante clause which states that "Notwithstanding anything contained in any other provisions of this Act", thereby imposing the provisions of this section and overshadowing the beneficial provisions of the DTAA.

Considering the above non-obstante clause, the tax authorities were taking a view that, section 206AA would override the provisions of section 90(2) and hence, the provisions of DTAA as well. However, the deductors argued that the beneficial provisions of DTAA (allowing a lower tax withholding) cannot be denied. This matter had become a major issue of litigation in the recent years.

In this regard, recently, the Bangalore bench of the Income Tax Appellate Tribunal ('ITAT'), in the matter of DCIT Vs Infosys BPO Ltd[1] had held that, the provisions of TDS have to be read along with the machinery provisions of computing the tax liability on the sum in question and there is no scope for deduction of tax at a higher rate, when the benefit of the DTAA is applicable. Similar decisions were rendered by the ITAT in the cases of Wipro Ltd.[2], Serum Institute of India Limited[3] and Bharti Airtel Ltd.[4] holding that the higher rates are not to be applied where the DTAA rates are lower.

The requirement of obtaining PAN or getting in to the net of litigation in the alternative, deterred many non-resident companies from doing business with India.

Taking note of these issues and concerns, the Government of India, vide the Finance Act 2016, inserted sub-section (7) to section 206AA, which provides that the higher rate of withholding tax shall not be applicable to payments made to non-residents, subject to conditions, as may be prescribed.

In providing these conditions under section 206AA(7), the Central Board of Direct Taxes , vide notification dated 24 June 2016, has inserted a new Rule 37BC to the Income-tax Rules, 1962, prescribing the details and documents that a deductee is required to furnish. The new Rule provides that, section 206AA of the Act will not apply in respect of payments like interest, royalty, fees for technical services and payments on transfer of any capital asset even if the deductee has no PAN but furnishes the details and documents prescribed therein i.e. –

- Name, e-mail id and contact number;
- Address in the country or specified territory outside India of which the deductee is resident;
- A certificate of his being resident in any country or specified territory outside India, from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of

1 154 ITD 816 (Bangalore ITAT) (2016)
2 ITA Nos. 1544 to 1547/Bang/2013 (Bangalore ITAT) (2016)
3 68 SOT 254 (Pune ITAT) (2015)
4 67 taxmann.com 223 (Delhi ITAT) (2016)

(Contd. in page 12)

Financial Reporting – Practitioners Update

CA. Vinayak Pai V

A. Introduction

The regulators have provided certain relaxations to companies in the form of extending the due dates for financial statement submission and doing away with the requirement of preparing consolidated financial statements for unlisted subsidiary companies which was sort of a pain point from the compliance aspect.

This fiscal will see new avatars of prevailing Accounting Standards (AS) come into effect and one needs to importantly look at specific transitional provisions.

Bank auditors have more window of time to grasp the nuances of financial instruments standard, despite the fact that banks are required to prepare IND-AS financials on a pro-forma basis for the coming half-year.

The next set of unlisted companies transition to IND-AS from the next fiscal. IFRS is not a complex piece of accounting literature compared to its United States counterpart viz. USGAAP. The transition is not a complex exercise for mid-sized unlisted entities. Nevertheless, the time to plan for implementation by companies and by audit teams for statutory/internal audit is now.

B. Updates

i) Extension of due date for filing financial statements and annual return for Companies

The Ministry of Corporate Affairs (MCA) vide General Circular No. 08/2016 dated July 29, 2016 has extended the due date for filing financial statements and Annual return by Companies to **October 29, 2016**. The extension applies where the due date for holding the Annual General Meeting is on or after April 1, 2016.

It may be noted that an updated version of Form **AOC-4** has been posted on the MCA website. Further, Form **AOC-4 (CFS) and AOC-4 (XBRL)** are undergoing revisions and the updated versions would be deployed by end of August 2016.

ii) Intermediate unlisted subsidiary companies need not prepare CFS

Section 129 (3) of the Companies Act along with related Companies (Accounts) Rules, 2014 mandated preparation of Consolidated Financial Statements (CFS) by a company that has subsidiaries (term encompassing subsidiaries, associates and joint ventures).

On July 27, 2016, the MCA notified Companies (Accounts) Amendment Rules 2016. Accordingly, the **consolidation requirements** in the Companies (Accounts) Rules **would not be applicable** to a company that is **unlisted** and is a **subsidiary of another company**, provided **specified conditions** are met. The conditions being a) other shareholders of the company have been intimated in writing about this fact and they have no objections, b) the company is unlisted with no current intention of listing and c) its ultimate or intermediate holding company files consolidated financials with the Registrar in accordance with accounting standards.

It may be noted that a related **Form AOC – 1** has also been amended consequentially.

iii) AS 10 – Capitalization at cash price equivalent

The amended AS 10 that is applicable from the current fiscal 2016-17 requires capitalization of property, plant and equipment (PPE - the new term for 'fixed assets') at cost, which is the **cash price equivalent.**

Where the **payment** for the acquisition of an item of PPE is **deferred beyond normal credit terms, then the accounting required is as follows,** which is different from the practice hitherto under the previous version of AS 10.

a) The PPE should be capitalized at the cash price equivalent. This requires assessment of the materiality aspects, the identification of the financing intent in the transaction and documenting the cash price equivalent amount.

b) The initial accounting for the credit leg of the purchase will also be on the basis of cash price equivalent and not the amount payable as per the invoice.

c) The difference between the amount capitalized and the transaction amount payable is required to be charged to the profit and loss account as an element of interest cost.

d) The transitional provision of AS 10 requires prospective application for certain initial measurement aspects and this does not cover para 25 that deals with cash price equivalent cost capitalization. Accordingly, the exposure to the above needs to be verified for PPE as of March 31,2016 in the current year audit.

e) For transactions of acquisition during the year, capitalization needs to be verified for this requirement of AS10 as it has a P&L impact (not merely limited to March 31, 2017 balance sheet snapshot).

iv) Expected Credit Loss (ECL) provisioning kicks in for banks for Sep 30, 2016 pro-forma IND-AS financials

The RBI has directed banks to prepare IND-AS financials on a pro-forma basis for the ensuing half-year ending September 30, 2016.

Among the key features of the new accounting framework for banks is provisioning for loans and advances (**financial assets**) based on 'expected credit loss' model. The ECL model is a stage-wise provisioning model with provisioning required right from Day 1 of origination of a loan. The provisioning is supposed to mirror the pattern of deterioration of the quality of an asset. The ECL model is a three-stage model. A **12-month ECL provisioning is required on Day 1** (Stage 1). In the second stage, when the credit risk increases significantly, a **full lifetime Expected Credit Loss** needs to be provisioned.

It may be noted that lifetime ECL is the expected credit loss that results from all possible default events over the expected life of an asset. Also, there is a **rebuttable presumption** that the credit risk on a financial asset has increased significantly since Day 1 when contractual payments are **more than 30 days past due**.

While the above is based on the international variant of financial reporting standards, more fine-tuning of the same from the Indian regulators can be expected when banks converge with IND-AS in 2018.

v) Planning for unlisted companies IND-AS transition in 2017-18

The following need to be reckoned for an unlisted companies IND-AS transition in the second phase of IFRS convergence in India.

a) Unlisted companies with a net-worth in the range of Rs.250-500 crore (as of March 31, 2014) need to prepare their **financials for 2017-18** as per notified IND-AS,

b) Such companies need to prepare an **IND-AS balance sheet as of April 1, 2016** which is the starting point for IND-AS accounting,

c) While all notified IND-AS are important, the key to the first IND-AS financial statement preparation and audit is **IND-AS 101** – *First Time Adoption of Indian Accounting Standards.*

d) The requirements of **Schedule III (IND-AS) to the Companies Act, 2013** (the amended Schedule that now incorporates an IND-AS compliant format for the Statement of Profit and Loss and Balance Sheet) forms another important compliance checklist for the planning.

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A Much Awaited Relief to Non-residents on Non-furnishing of PAN

(Contd. from page 10)

which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

Therefore, effective 24 June 2016, higher withholding tax under the provisions of section 206AA would not be applicable to non-resident payee, if the above mentioned information and documents are made available to the payer, at the time of tax deduction. It is pertinent to note that the new Rule 37BC covers only payments in the nature of fees for technical services, payments on transfer of capital asset, interest and royalty.

By insertion of sub-section (7) to section 206AA and with the notifying of the conditions, the Government has provided a much awaited relief and certainty to the non-residents on the applicability of beneficial rate on furnishing of the prescribed details and documents, enabling further 'ease of doing business in India'.

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INDIRECT TAXES UPDATE – JULY 2016

CA C.R. Raghavendra *B.Com, FCA, LLB, Advocate* and
CA Bhanu Murthy J.S. *B.Com, FCA, LLB, Advocate*

a) <u>Common registration and return for First Stage Dealer and Importer:</u>

An assessee who is registered as a First Stage Dealer is exempt from taking registration as an importer and vice-versa. A single registration would suffice for both the activities.

It is clarified that the assessee opting for a single registration for both activities need to file a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return, viz., all transactions as first stage dealer during the return period will be followed by all transactions as an importer during the same return period.

However, it is provided that the facility of taking a single registration is optional and any assessee requiring separate registrations may do so and file separate returns accordingly.

Notification No. 30/2016-Central Excise (N.T.), Dated: June 28, 2016

b) <u>Time limit for taking Registration under Central Excise by Jewellers</u>

The Central Government has extended the time limit for taking central excise registration of an establishment by a jeweller upto 31st July 2016. Further, the central excise duty is liable to be paid from 1st March 2016, however jewellers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016 upto the extended date of July 31, 2016.

Circular No. 1033/21/2016-CX dated July 1, 2016

c) Clarification regarding levy of excise duty on readymade garments and made articles of textiles bearing a brand name or sold under a brand name and having a retail sale price of Rs. 1000 or more:

Issue: Whether excise duty would be chargeable on readymade garments or made up articles of textiles which are sold by a retail store which merely affixes the retail sale price on the readymade garments or made up articles of textiles which are purchased by such retail store from the open market?

Clarifications:

a. The present levy is not on all readymade garments and made ups, and is restricted only to readymade garments and made up articles of textiles bearing a brand name or sold under a brand name and having retail sale price (RSP) of Rs. 1000 or above. Further, to avoid disputes and minimize duty evasion, it has also been provided that affixing a brand name on the product, labeling or relabeling of its containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

b. "Brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

c. However, such retailer shall not be liable to pay excise duty if:

1. the retail sale price of such readymade garments or made up articles of textiles is less than Rs. 1000, or
2. the aggregate value of clearances for home consumption by such person is less than Rs. 1.5 crore in a year [provided aggregate value of clearances during previous financial year was less than Rs. 4 crore].

d. Merely because the outlets [shop] of a retailer, from where readymade garments or made ups are sold, has a name, say, M/s XYZ and Sons, the readymade garments or made ups sold from such outlet [shop] cannot be held as branded readymade garments or made ups and become liable to excise duty. Needless to say, deemed manufacture and liability to excise duty will arise only if such retailer affixes a brand name on the readymade garments and affixes a label bearing the RSP on the packages containing the readymade garments of Rs. 1000 or above.

e. It is hereby directed that field formations shall not visit individual retail outlets or retail chains, except based on specific inputs regarding duty evasion and with the approval of the jurisdictional Commissioner or Additional Director General or above.

d) <u>Exemption from KKC – where invoice is issued prior to 1st June 2016:</u>

Krishi Kalyan Cess leviable on the taxable services is exempted where the invoice for the service has been issued

on or before 31st May, 2016 subject to the condition that the provision of the service has been completed on or before 31st May, 2016.

Notification No. 35/2016-Service Tax dt. 23-06-2016.

e) <u>Exemption for ocean fright from outside India to customs station in India till 31st May 2016:</u>

The service tax on taxable services by way of transportation of goods by a vessel from outside India upto customs station in India is exempted where the invoice for the service has been issued on or before 31st May, 2016 subject to the condition of production of customs certified copy of the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962.

Notification No. 36/2016-Service Tax dt. 23-06-2016.

f) Speedy disbursal of pending refund claim of export of services under Rule 5 of CCR, 2004:

(1) It is clarified that speedy disbursal of refund scheme is applicable for service tax registrants who have filed refund applications before 31st March 2015 and has not been disposed off as on 10.11.2015. Refund claims which have been remanded are outside purview of this scheme.

(2) The decision to grant 80% of refund is an administrative order and not quasi-judicial order and hence not subjected to review.

(3) In case of companies, the Statutory Auditor has to issue the required certificate and in case of assessee other than companies, any Chartered Accountant has to issue the certificate. As regards CA certificate any additional averment made by CA in their certificate, the additional remarks, which do not negate the wordings Paragraph 1.1 to 1.4 may be ignored and refund should not be rejected merely on this ground.

Circular No. 195/05/2016-Service Tax dated 15th June 2016.

g) Central Excise duty on Jewellery :

A. Notifications

Notification No.	Details of the notification
No. 26/2016 – CE dt. 26.07.2016	Articles of jewellery / parts of articles of jewellery would be subjected to levy of duty of excise @1% without Cenvat benefit
No. 27/2016 – CE dt. 26.07.2016	In case jewellery is manufactured (i) from jewellery provided by a retail customer; or (ii) by mounting of precious stones provided by a retail customer, then duty shall be payable only to the extent of value of additional material used and labour charges. Conditions and procedure prescribed
No. 28/2016 – CE dt. 26.07.2016	SSI exemption limit for Jewellery manufacturer - Exemption upto first clearance value of Rs. 10 crores subject to condition that aggregate value of clearances in the previous year does not exceed Rs. 15 crores. Further requirement of obtaining registration would be only after crossing the full exemption.
No. 29/2016 – CE dt. 26.07.2016	Exemption to handicrafts of jewellery withdrawn.
No. 33/2016 – Central Excise (N.T.) dt. 26.07.2016	Tariff values have been prescribed for the purpose of valuation of articles of jewellery
No. 34/2016 – Central Excise (N.T.) dt. 26.07.2016	Articles of Jewellery (Collection of Duty) Rules, 2016 providing manner of payment of duty and optional scheme has been notified.
No. 35/2016 – Central Excise (N.T.) dt. 26.07.2016	Central Excise Rules, 2002 has been amended to provide that the assessee engaged in manufacture of articles of jewellery is required to file the returns on quarterly basis within 10 days from the end of the quarter.
No. 36/2016 – Central Excise (N.T.) dt. 26.07.2016	

B. Clarifications

i. Taxability of stock of articles of jewellery as on 29.02.2016

It is clarified that stock of articles of jewellery at the premises (including branches) of principal manufacturer would not be subjected to levy of duty of excise

In case of stock lying with job worker, the principal manufacturer has to self assess and pay duty on the said work in progress

[Source: Circular No. 1045/33/2016-CX dt. 26.07.2016]

ii. Vide Circular No. 1044/33/2016-CX dt. 26.07.2016, Central Board of Customs and Excise has issued Guidelines for issue of summons, visits, search, seizure, arrest and prosecution regarding manufacturers or principal manufacturers of articles of jewellery or parts of articles of jewellery or both.

The said Guidelines imposes a restriction on visit or search or seizure of the articles and provides that except under specified circumstances and only with approval of officer of the level of commissioner such procedures of search, seizure etc., shall be undertaken

iii. General procedures regarding excise duty on articles of jewellery or parts of articles of jewellery or both falling under heading 7113

a. A manufacturer or principal manufacturer of articles of jewellery may also do trading of articles of jewellery from his central excise registered premises.

b. For a jeweller [above the SSI excise duty exemption limit]:

(i) in case his first sale invoices show excise duty separately, the same will have to be paid to the Government; and

(ii) in case his sale invoices do not show separately the excise duty, the value for VAT will be treated as cum excise duty value [that is value for excise duty plus excise duty] and duty payable will have to be determined accordingly.

c. No excise duty will be payable on the sale of traded articles of jewellery [on which appropriate excise duty, including nil duty, has already been paid].

d. Records maintained for State VAT and other private records, showing details of inputs, stocks, manufactured goods, sold/exported goods, etc., as per the scheme opted by the jewellery manufacturer [Refer rule 12 of the Articles of Jewellery (Collection of Duty) Rules, 2016], will suffice for central excise purposes also.

e. For articles of jewellery manufactured on job work basis, the procedure as prescribed in the Articles of Jewellery (Collection of Duty) Rules, 2016 is to be followed. Accordingly, the procedure prescribed for job work under notification No. 214/86-CE will not be applicable on manufacture of articles of jewellery on job work basis.

f. Repairs and alterations, which do not change the identity, character and use of the goods and do not result in a new item, is not "manufacturing" and will not attract excise duty.

[Source: Circular No. 1043/33/2016-CX dt. 26.07.2016]

iv. Procedural simplification for export of articles of jewellery

Vide Circular No. 1042/33/2016-CX dt. 26.07.2016, Central Board of Customs and Excise has simplified the export procedures for jewelers wherein the said assessees need not obtain registration under central excise subject to condition of furnishing a Bank Guarantee.

v. Clarification on computation of exemption and eligibility and exemption limits and other related issues for small scale industries [SSI] exemption in respect manufacturer or principal manufacturer of articles of jewellery or parts of articles of jewellery or both:

i. Computation of Eligibility and Exemption limits for SSI exemption [Notification no. 8/2003-CE dated 1st March 2003] is to be done individually for each manufacturer or principal manufacturer, irrespective of the number of job workers employed by such manufacturer or principal manufacturer or the number of premises from which his job workers operate.

ii. For computation of Eligibility and Exemption limits for SSI exemption the value of articles of jewellery exported [except those exported to Bhutan] will not be counted.

iii. Similarly, for computation of Eligibility and Exemption limits for SSI exemption the value of traded articles of jewellery [on which appropriate excise duty, including nil duty, has already been paid] will not be included.

iv. Further, in respect of jewellery manufactured out of jewellery or precious stones supplied by the individual retail customer, only the value addition [sum of cost of additional material used and labour charges/making charges charged by the manufacturer or principal manufacturer] shall be taken into consideration for computation of such limits.

vi. Multiple manufacturers or principal manufacturers, operating from the same premises and individually registered under State VAT on or before February 29, 2016, may be allowed separate central excise registrations. However, in such cases the value of clearances of all such manufacturers or principal manufacturers shall be clubbed together for determining the eligibility/exemption limits for the purposes of the small scale industries [SSI] excise duty exemption. Thus, if the clubbed together aggregate value of clearances of all such manufacturers or principal manufacturers during the preceding year is more than Rs. 15 crore then none of such manufacturers or principal manufacturers will be eligible for SSI exemption. Similarly, as and when the clubbed together aggregate value of clearances of such manufacturers or principal manufacturers in a financial year crosses Rs. 10 crore, all such manufacturers or principal manufacturers will be liable to pay excise duty on their clearances thereafter.

[Source: Circular No. 1040/28/2016 - CX dt. 26.07.2016]

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GST - When is a Supply in the Course of Interstate Trade

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With the passage of the 122nd Constitutional Amendment Bill in the Rajya Sabha, the introduction of the Goods and Services Tax ("GST") is imminent. Of course, there is still some way to go for the regime changeover, as the State Legislatures need to first ratify the Constitutional Amendment, and then the drafts of the Central GST and State GST legislations have to be finalized and passed by the Union Parliament and the State Legislatures, respectively. That said, now that the Model CGST/SGST and the IGST laws have been available to the public for a while, it would be useful to cover some basic concepts and chart a broad outline of what is in store once GST is introduced. In this month's article, I briefly discuss the Model GST laws insofar as they set out principles for the determination of when a supply of goods/services is deemed to be in the course of interstate trade or commerce.

Definition of IGST.

IGST has been defined under Section 2(c) of the Model IGST law to mean "the tax levied under this Act on the supply of any goods and/or services in the course of inter-state trade or commerce." Explanation 1 to the definition states that a supply of goods/services in the course of import of goods/services into the territory of India shall be deemed to be a supply of goods/services in the course of inter-state trade or commerce. Similarly, Explanation 2 states that an export of goods/services shall be deemed to be a supply of goods/services in the course of inter-state trade or commerce. Therefore, IGST is the tax leviable on all supplies of goods/services in the course of interstate trade or commerce, which includes imports and exports.

Principles for determining when a supply of goods/services is in the course of interstate trade or commerce.

Sections 3 and 3-A of the Model IGST Act is, in my opinion, the most critical provision in the enactment. This is because the provisions explain when a supply of goods/services will be deemed to be in the course of interstate trade or commerce and, therefore, subject to IGST. Therefore, in order to determine whether a supply is exigible to CGST/SGST or IGST, one would have to apply the principles set out under Sections 3 and 3-A.

Section 3(1) applies to goods and states that the "supply of goods in the course of intestate trade or commerce means any supply where the location of the supplier and the place of supply are in different States." Similarly, Section 3(2), which applies only to services, states that the "supply of services in the course of interstate trade or commerce means any supply where the location of the supplier and the place of supply are in different States." As a corollary to the provisions of Section 3, sub-sections (1) and (2) of Section 3-A state that the intrastate supply of goods and services means any supply of goods and services where the location of the supplier and the place of supply are in the same State.

Therefore, in order to determine whether a supply is in the course of interstate or intrastate trade or commerce, one has to determine the location of the supplier and the place of supply. If both the location of the supplier and the place of supply are in the same State, then the supply will be deemed to be in the course of intrastate trade and, therefore, CGST/SGST would be leviable. On the other hand, if the location of the supplier and the place of supply are in different State, the supply of goods/services will be exigible to IGST.

Location of Supplier of Services.

The location of a supplier of a service is to be determined in accordance with the provisions of Section 2(65) of the Model CGST/SGST Act, which defines the term, "location of supplier of service." The said provision reads as follows:

> *"location of supplier of service" means:*
>
> *(i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;*
>
> *(ii) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;*
>
> *(iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
>
> *(iv) in absence of such places, the location of the usual place of residence of the supplier."*

Therefore, if a service is supplied from a registered place of business, such place shall be deemed to be the location of supplier of the service. Note that "place of business" has been defined under Section 2(75) of the Model CGST/SGST Act to include: (a) a place from which a business is ordinarily carried on, including a warehouse or godown where a taxable person stores his goods, or provides or receives goods/services; (b) a place where a taxable person maintains his books of accounts; or (c) a place where a taxable person is engaged in business through his agent.

If the service is provided from a place other a registered place of business, and from a fixed establishment elsewhere, such fixed establishment shall be deemed to be the location of the supplier. "Fixed Establishment" has been defined under Section 2(46) of the CGST /SGST Model law to mean "a place (other than the place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs." Therefore, if a service is provided from a place that cannot be said to be place of business and for which registration is not obtained, the location of the supplier would be the place from which the supply is made, provided the place has a sufficient degree of permanence and is equipped with suitable human and technical resources to supply services, and to receive and use services for its own needs.

In cases where the service is supplied from more than one establishment, irrespective of whether they are places of business or fixed establishments, the location of the supplier will be the location "most directly concerned with the provision of the supply." This provision appears to be slightly ambiguous as it is not clear what the words "most directly concerned" imply. The question that immediately come to mind is whether "most directly concerned" refers to the place from which the bulk of the services are rendered, or does it imply something else. For instance, if a Chartered Accountant renders services from his Hyderabad and Bangalore offices to a client in Bangalore, how does one determine which of the two offices is most directly concerned with the provision of service?

Lastly, Section 2(65)(iv) states that if the place of business or fixed establishment from where services are rendered cannot be determined, the location of the usual place of residence of the supplier shall be deemed to be the location of the supplier.

Location of Supplier of Goods.

There appears to be a lacuna in the model laws with regard to the location of supplier of goods. Unlike in the case of services, there is no provision in any of the model laws that lay down principles to determine the location of supplier of goods. In the absence of such a provision, it is unclear as to how one must determine the location of the supplier of goods. Would the location be the registered place of business of the supplier from where goods are sent, or the location from where the goods are dispatched, irrespective of whether the location is a registered place of business or not? Such a glaring lacuna will almost surely be set right by the time the final enactments are brought into force. For the moment, it is sufficient to recollect that if the location of the supplier and the place of supply of goods are in different states, then the supply is said to be in the course of interstate trade and, therefore, subject to IGST.

Place of Supply of Services.

Once the location of the supplier of services has been determined, the next step would be to establish the place of supply of service. Section 6 of the Model IGST Act sets out elaborate principles to determine the place of supply of services. Broadly speaking, except for certain services in respect of which the place of supply has been specifically assigned under sub-sections (4) to (15) of Section 6, the place of supply of services is the location of the recipient of the services, provided the recipient is a registered person. In short, the place of supply of services rendered to a registered person is, generally, the location of such recipient of services. Section 2(64) sets out principles similar to the provisions of Section 2(65) in order to determine the location of recipient of services. Accordingly, if the supply of service is received at the registered place of business of a person, such place shall be the location of recipient of the service. If the supply is received at a fixed establishment other than the place of business for which registration has been obtained, the location of the recipient shall be such fixed establishment. If the service is received at more than one establishment, then the location "most directly concerned with the receipt of the supply" shall be the location of the recipient, and if none of the above principles apply, then the location of the recipient shall be the usual place of residence of the person receiving the service.

The situation is a little more complicated if the person to whom services are supplied is not a registered person. In such cases, as per Section 6(3) of the Model IGST Act, the place of supply shall be: (a) the location of the recipient where the address on record exists, and (b) the location of the supplier of services in other cases. "Address on record" has been defined under Section 2(3) of the CGST/SGST Act to mean "the address of the recipient as available in the records of the supplier." Therefore, if the supplier of services has the address of the recipient on record, then the place of supply will be such address. If no such address is available in the records of the supplier, then the location of the

supplier, as determined under Section 2(65) of the CGST/SGST Act, will be deemed to be the place of supply.

Sub-sections (4) to (15) of the Model IGST Act specify the place of supply of services in respect of certain specific services. The provisions are broadly similar to those in the Place of Provision Rules, 2012, and for the sake of brevity, the services specified under sub-sections (4) to (15) are not discussed in this article. It would be sufficient to point out that the above mentioned sub-sections are fairly elaborate, and one would have to pay very careful attention to the said provisions in order to ensure that the place of supply is correctly determined.

Once both the location of the supplier and the place of supply of services are determined in accordance with the principles discussed above, one would able to ascertain whether a supply of services is intrastate or interstate in nature.

Place of Supply of Goods.

As per Section 5(1) of the Model IGST Act, the place of supply of goods is to be determined in accordance with the provisions of sub-sections (2) to (6) of the said Section.

Section 5(2) states that where the supply of goods involves the movement of goods, whether by the supplier or the recipient or any other person, "the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient." Therefore, if, for instance, goods are dispatched by a supplier in Bangalore for delivery to a recipient in Chennai, the place of supply shall be Chennai since that is where the movement of goods terminates. This provision has the potential to cause some confusion amongst persons who make supplies where some of the goods are delivered in the same state of the supplier while some goods are delivered in a different state. For example, if some goods are being supplied by a person located in Bangalore and some of the deliveries are to be made in Bangalore city and some others across the state border in Hosur, then as regards the goods being supplied in Bangalore, CGST/SGST would be leviable but as regards goods delivered in Hosur, IGST would be applicable.

Section 5(2A) relates to supplies by agents or persons who are acting as per the directions of a third party either by way of transfer of documents of title to the goods or otherwise. The said provision states that in such cases, it shall be deemed that the said third person, at whose instance the goods are delivered, shall be deemed to have received the goods and the place of supply of such goods shall be the principal place of business of such person. This provision is rather confusingly worded and gives rise to considerable ambiguity. The simplest example of when this provision would be applicable is if a person directs an agent or any other person to supply goods to him. In such a case, the recipient's principal place of business shall be deemed to be the place of supply. The provision also appears to be applicable if a manufacturer directs an agent or another person to deliver goods manufactured by him to a recipient. Then, as per the provision, it is the manufacturer who will be deemed to have received the goods since it is upon the manufacturer's directions that the goods were delivered to the recipient. One can see how this provision can give rise to confusion and it is hoped that it is worded in a simpler manner before the enactments are finally legislated.

Section 5(3) states that where the supply of goods does not involve the movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of the goods at the time of delivery to the recipient. For instance, in the case of a sale of an industrial unit, where the machinery in the unit is not required to be moved, the place of supply shall be the location of the goods at the time of delivery.

Section 5(4) refers to goods which require assembly or installation, and the said provision states that the place of supply shall be the place of assembly or installation. Section 5(5) is an interesting provision, which states that where goods are supplied on board a conveyance, such as a train or aircraft, the place of supply shall be the location at which the goods are taken on board. Therefore, if food is supplied by a caterer on board an aircraft parked in Bangalore, the place of supply is deemed to be Bangalore, irrespective of where the food is eventually sold to the passenger on the aircraft. Finally, as per Section 5(6), if the place of supply cannot be determined in accordance with sub-sections (2) to (5), the place of supply shall be determined by law in accordance with the recommendations of the GST Council.

Conclusion.

It can thus be seen that a taxable person has to carefully take into consideration a number of provisions of law in order to determine whether the supply of goods and services is intrastate or interstate. To summarize, first the location of the supplier must be determined and then the place of supply must ascertained. IGST would be payable if the location of the supplier and the place of supply are in different states whereas CGST/SGST would be payable if they are in the same state. This may sound very simple, but as can be seen from the discussion above, the provisions relating to supply of goods and services are vast and anything but straightforward.

Author can be reached on
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Study Circle - Discussion on Practical Aspects of Sec.195, Form 15CA & CB

CA Day Celebration by Bagalkot District Chartered Accountants Association

Bagalkot District Chartered Accountants Association celebrated CA day on 1st July 2016 with Blind Students by donating Water Filter to Sajeevi Residential School for Blind, Bagalkot and Honouring to Senior Members.

Congratulations to Members who have made us proud

CA. K. Raghu
has been nominated by the Ministry of Finance as Non Official Director of Indian Overseas Bank for a period of 3 years.

CA. N. Nityananda
has been nominated by the Government of India as a Government Nominee Director on the Board of Central Bank of India for a term of 3 years and also elected as Managing Committee Member of FKCCI.

CA K. Ravi
has been elected as the Senior Vice President of Federation of Karnataka Chamber of Commerce & Industry (FKCCI) for the year 2016-17.

CA I.S. Prasad

Elected as Managing Committee Members of FKCCI.

CA S. Prabhudev Aradhya

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Karnataka State Chartered Accountants Association
jointly hosting with
Shimoga District Chartered Accountants Association

Seminar on Direct Taxes

Organised by
Shimoga District CPE Chapter

Taxation of Joint Development Agreements
CA. Prashant G S

Tax Audit - Issues & Reporting Changes
CA. Naveen Khariwal

on **20th August, 2016**
at 9.00 AM to 2.00 PM

Venue:
Star Crew, 3rd Floor, SS Complex
Above Harsha Show Room, B H Road, Shivmogga - 577202

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CA. Raghavendra Puranik	CA. Shivaswamy	CA. K V Vasanth Kumar
President, KSCAA	Convener, SDCCA	President, SDCCA

BASAVANAGUDI CPE STUDY CIRCLE

Lecture Meeting
on

Tax Audit Issues & Reporting Changes

Speaker: **CA. P.R. Suresh**

on
Friday, 26 August 2016
at 5.00 PM to 8.00 PM

Venue:
Vasavi Vidyanikethan Trust (VVN),
No: 3, Vani Vilas Road, VV Puram,
Basavanagudi- Bangalore-560 004

CPE Credit 3 Hours

Fee: **Rs.200/-**

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Co-ordinator : CA. Nagappa Nesur - +91 98867 11611

Karnataka State Chartered Accountants Association
jointly With
The Davangere Chartered Accountants Association
Organised

Seminar on Direct Taxes

Assessment of Charitable Trusts

Speaker: **CA. Dr. N Suresh**, Bengaluru

on **3rd September, 2016**
at 2.00 PM to 5.30 PM

Venue:
Bapuji MBA College
Shamanur Road, Davangere

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CA. Umesh Shetty, Secretary, DCAA - +91 94481 55182
CA. Pramod Srihari, Co-ordinator - +91 96200 75048

CA. Raghavendra Puranik	CA. Kiran L Patil
President, KSCAA	President, DCAA

BASAVANAGUDI CPE STUDY CIRCLE

Lecture Meeting
on

How Well you are prepared to deal with IFC?

Speakers: **CA. Amit Agrawal**
CA. Madhavi D K

on
Friday, 9 September 2016
at 5.00 PM to 8.00 PM

Venue:
Vasavi Vidyanikethan Trust (VVN),
No: 3, Vani Vilas Road, VV Puram,
Basavanagudi- Bangalore-560 004

CPE Credit 3 Hours

Fee: **Rs.200/-**

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